

Equality in Practice: A Handbook on Disability  
for Law Professionals

“Since 1981, Reach has successfully brought public and private sector forces together to address equality and justice issues that have been identified by community members who have a disability...”

*Right Honourable Ramon J. Hnatyshyn P.C.,  
C.C., C.M.M., C.D., Q.C. (1934-2002)*

With this in mind, this Handbook has been developed for the benefit of all Canadians, and these materials are available in detail at:

[www.reach.ca](http://www.reach.ca)

The illustration on the cover of this handbook suggests that the justice system — symbolically represented by the pen and gavel — is looking at itself, to determine if equality for persons with a disability is reflected in the practice of law throughout Canada. Understanding that the concept of equity implies the need for a particular accommodation, Canadian legislation relates directly to the concept of equality and the “duty to accommodate”.

## Foreword



More than four million people across Canada have a disability. They come from all walks of life every age group, culture and economic situation. They impact the lives of family, friends and neighbours, and the numbers are increasing as a result of population growth and the steady improvements in life expectancy.

Many individuals with a disability continue to be marginalized because of ignorance and discrimination, often lacking the means to control their own destiny. They face years of accumulated attitudinal barriers which prevent full participation in community affairs.

**“What’s the point of having a justice system if there is no access to justice?”**

Gordon F. Henderson, C.C., Q.C., LL.D. (1912 -1993)

All citizens claim a right to live in a society that protects their equality, supports their independence and provides opportunities for full participation in community life. It is no different if a person has a disability. In fact, Canadians have changed their constitution and laws to be instruments for just such equality and respect.

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Nevertheless, within Canada’s justice system, there is considerable evidence of gaps in accommodation, access, levels of service and employment regarding Canadians with disabilities. Many contend that the justice institutions and legal processes in Canada, discriminate on the basis of disability itself, and others say that much of this inequality of service comes from a lack of knowledge and confidence by individuals with disabilities. Both of these concerns are legitimate and deserve attention. Certainly, some people with disabilities may need accommodations in order to participate fully in any legal process and others may just need extra encouragement and extra time to participate fully and effectively.

This handbook is part of a special initiative by Reach Canada, with support from the Department of Justice, Government of Canada. It is intended for law professionals, to help them to execute their “duty to accommodate” and to lead a transformation in the justice system – to make **“Equality in Practice”** an everyday reality.



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**A person  
with a  
disability...**



**get it right!**

Understanding that language and terminology evolve over time, there is some confusion in Canada over which terms are the most appropriate or accurate, when referring to a “person with a disability”. Naturally, it is preferable to use a person’s name and, if necessary, refer to him or her as a “person with a disability”. Do not use “handicapped person”. Do not use “impaired person”. Do not use “challenged person”. Simply and respectfully, use “a person with a disability”. The reasoning behind this shift in language may appear to be contrived, but it is nevertheless a convention that persons with disabilities prefer. In the final analysis, all people are people first... and all people have abilities.

## **A Rose is a Rose... or is it?!**

The United Nations, through the W.H.O. has worked with experts in the disability field to establish international norms and understanding of language with the following definitions.

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**Impairment:** any loss or abnormality of psychological, physiological or anatomical structure or function, such as vision, hearing or mobility. A person with one leg, for example, is considered to be mobility impaired but, often assistive or technical devices can be used to accommodate the impairment.

**Disability:** any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a human being."

**Handicap:** a disadvantage, resulting from the interaction of a person with an impairment or disability and his/her environment. This usually limits or prevents the fulfillment of a role that is considered normal. In recent times, "handicap" has come to mean "an environmental or attitudinal barrier". The handicap exists in the environment, not in the person. Curbs or steps, for example, are handicaps to a person who uses a wheelchair.

**Therefore, a person with a spinal cord injury (disability) using a wheelchair (to accommodate the mobility impairment) experiences a disadvantage (handicap) when encountering stairs.**



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## Some general information about disabilities:

People with **physical disabilities** experience some form of limitations in mobility or agility. Mobility often requires the use of aids like wheelchairs or canes, and agility usually involves other physical activities such as gripping or lifting. Physical disabilities may exist from birth (e.g. spina bifida or cerebral palsy); may be as a result of disease (e.g. arthritis or muscular dystrophy) or be acquired as a result of an accident or trauma (e.g. spinal cord injury or amputation).

People with **learning disabilities** may experience frequent and/or persistent problems with processing information. These could include attention, memory, reasoning, listening (but not hearing), reading, writing, mathematics, or organizational and social skills. People with learning disabilities often learn to compensate for their disability by performing activities in a "different" way.

People with **hearing disabilities** (people who are Deaf, deafened or hard-of-hearing) experience a range of hearing loss /ability and use various accommodation strategies (e.g. hearing aids, closed captioning, writing, lip-

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reading, sign language and interpreters). People with hearing disabilities often rely even more on gestures, body language and other visual cues when communicating. Over 500,000 working age Canadians have a hearing disability.

People with **visual disabilities** experience various degrees of sight, ranging from no vision at all (about 10% of all those who are legally blind) to some vision. Often, visual disabilities can be corrected with glasses. A common obstacle for people with visual disabilities involves access to printed material.

People with **psychiatric disabilities** may be living with conditions such as schizophrenia, anxiety disorder, bipolar affective disorder (formerly referred to as manic depression) or personality disorder. Psychiatric disabilities vary greatly. For many, their illness does not affect their ability to work and their symptoms are controlled or in remission. Despite this, these individuals often suffer stigma associated with mental illness: unfounded beliefs that all people with such disabilities are unreliable or even dangerous to themselves, or others.

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People with **developmental disabilities** may experience a range of mental or physical impairments like growth deficiencies and delayed motor-skill development. Usually, both conditions present early in life, and can impact important life activities such as self-care, language and learning. In the past, autism and developmental disabilities such as Down's Syndrome, were lumped together as "mental retardation". This attitude has changed with the realization that people with developmental disabilities learn differently and, like other people, have various abilities to learn and grow with appropriate training and support.

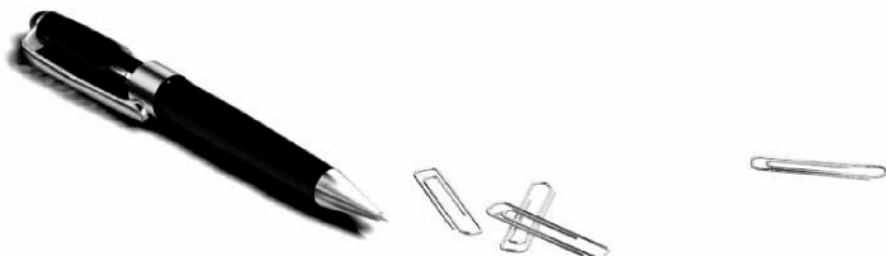
People with **speech disabilities** may exhibit such conditions as aphasia, dysphasia or stuttering, resulting in difficulty forming, expressing or understanding the spoken word. Difficulty communicating could be caused by neurological conditions such as a stroke, cerebral palsy, hearing disabilities, developmental disabilities, or physical conditions such as cleft palate. Unfortunately it is often assumed that a person with a speech disability also has some sort of intellectual disability. That person may be reluctant to

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Speak with strangers or speak in public for fear of judgment or ridicule. Communication can be enhanced in several ways, including non-verbal language (sign-language and facial expressions), written communication, or with assistive devices like a “communication board”. As well, someone who is familiar with the person’s style of speech may be very helpful.

If you're uncertain or uncomfortable about how to interact appropriately with a person with a disability... just ask. It's a good start.

Note: The preceding information is meant as a guide to facilitate communications. More precise, technical information can be found by referencing the appropriate organizations noted in the “Contacts” section of this handbook.





## **Statistics... STILL Only Part of the Story**

**Profile:** About 4.2 million Canadians have a disability. According to Statistics Canada, about 7% of children under 15 years of age have a disability, while 13% of working age adults and 46% of Canadians over 65 also have a disability.

Disability can compound all kinds of problems for any individual. For instance, during their lifetime, women with disabilities are at least 1.5 times more likely to be abused or experience some form of violence, than non-disabled women. Women with disabilities find it especially difficult to escape from, or disclose abuse.

Assumptions about disability can be problematic. For example, there are 300,000 persons who are Deaf and use sign language. But there are over 3 million Canadians who are hard of hearing and don't know a word of sign language. So why do we emphasize sign language?

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Disability does not discriminate. It cuts across every economic and social characteristic. It affects people from every culture and every value system, regardless of their education, wealth, health status, location or profession. In 1981, to commemorate the United Nations' International Year of Persons with Disabilities, a special Parliamentary committee tabled the "Obstacles Report". In 130 recommendations, it highlighted anecdotal evidence about the nature and scope of disability and its impact on Canadian society, noting in particular, the obstacles to full participation in community affairs.

When Committee members turned to Statistics Canada to provide the data on the nature and extent of these barriers, they were surprised to learn that there were no quantitative data concerning the population with disabilities available at Canada's national statistical agency. The Committee directed Statistics Canada, as one of their major recommendations, to develop and implement a long-term strategy that would generate comprehensive data on the population with disabilities.

More than two decades have passed since the tabling of the Committee's report, and

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Canadian government officials are still working with Canadians with disabilities on several persistent problem areas. Programs and services have been implemented to remove physical barriers but barriers still exist. Many Canadians with disabilities are still confused as they attempt to find their way through a maze of government organizations with various jurisdictional concerns. Unmet needs are still the norm for many. Attitudes are changing but negative stereotypes still persist and these are reflected in, for example, the high numbers of Canadians with disabilities who have decided that looking for work is a useless exercise. More quantitative data concerning Canadians with disabilities exist but disability statistics still have no ongoing place within the national statistical program.

For a statistical profile of the nature and extent of barriers that prevent or impede Canadians with disabilities from their full participation in their community, see the Reach Canada Website ([www.reach.ca](http://www.reach.ca)). Information there is based on two sources — the 2001 Participation and Activity Limitation Survey and the Environics survey conducted in 2004 for the Government of Canada “Canadian Attitudes Towards Disability Issues”.



## **Working In The Community... “no assumptions, no expectations”**

Canadians with disabilities are like everyone else. They find identity in the community and they rely on the community for support and understanding.

Representatives from various disability groups want the general population, their justice system, and the media to understand that someone with a disability is a person-- first and foremost. It is better not to generalize or to make assumptions about anyone. Moreover, single characteristic definitions such as "the blind", "the epileptic" or "the disabled" have pejorative connotations. Such terms carry with them a notion of incompetence and dependence that simply is not justified. Every individual has unique and individual needs, as well as abilities, though this understanding is often overlooked in the haste and pressure of work.

On another note, the notion that people with disabilities are especially “challenged” or exemplify noble human characteristics with

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their bravery and tenacity is unwarranted. It's simply not fair and creates unreasonable expectations.

People with disabilities certainly have enough obstacles in their life, without the added burden of being considered a paragon of virtue. Some people with disabilities have a lovely personality, some are nasty, some have a dynamic wit, others couldn't find a punch line with a map; some have a positive outlook, some don't. People with disabilities demonstrate the same range of human characteristics as everyone else.

People with disabilities may have special needs, but as individuals they have the same hopes and desires as anyone else in this country. They might need some accommodation to reach their goals and to fulfil their aspirations, but they are like everyone else — citizens and members of the community.

"Every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination based on race, national origin, color, religion, sex, age or mental or physical disability."

(Section 15, Canadian Charter of Rights and Freedoms)

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Ours is one of the first constitutions in the world to guarantee the rights of people with disabilities. But, it is well understood that economic independence is the key to the achievement of real empowerment. In a society that values people in terms of production or consumption, it is imperative that reasonable accommodations be made to counter any artificial barrier to participation as producers or consumers.

Many governments in Canada have done a great deal in recent years, by recognizing disability as a question of citizenship. They have worked to remove obstacles that deny the rights that come with citizenship, and, in so doing, created a better chance for people with disabilities to reach their full productive potential.

Nonetheless, many individuals with disabilities are still frozen out of the decision-making processes that affect their lives. The challenge for the Justice system then, is to build on achievements and share technologies and experiences, in efforts to make full participation a reality for everyone.

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## **Interaction... Try Common Sense.**

Often, without intent, people with particular social stature or expertise can be intimidating and discomfoting. Grace, sensitivity and common sense are always useful when introduced to a person with a disability, even if the situation may be a bit awkward.

Here are some common sense suggestions that may be helpful in any interaction with a person with a disability.

If you are meeting someone who has partial paralysis, and, regardless of any limitation, an attempt is made to shake your hand, respond with a gentle handshake. If the attempt is not made, a friendly nod and smile followed by conversation will work just fine. Everyone should feel comfortable.

If attendants are present to assist a person with a disability, they may act as interpreters, but they do not control conversation. Address yourself directly to the person with a disability, not to the attendant, even if comprehension might be difficult . Sometimes, common sense isn't so common.

Always identify yourself and others who may be with you when meeting someone with a visual

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disability. When conversing in a group, remember to identify the person to whom you are speaking and ask if you can be of any assistance in accommodating the impairment.

Do not presume that people with disabilities want or need your help. Always ask first. If you offer assistance, wait until the offer is accepted and, if necessary, ask for instructions. It may be stressful to watch someone struggle with a simple task, but it is their choice to accept or declined assistance. For some, succeeding at a seemingly routine chore is an expression of autonomy, and it should be respected.

Place yourself at eye level when speaking with someone in a wheelchair or on crutches and do not distract a working animal (eg. guide or help dogs) from doing their job, without the owner's permission.

Treat adults as adults. Address people with disabilities by their first names only when extending that same familiarity to all others. Courtesy is also common sense.

Listen attentively when talking with people who have difficulty speaking and wait for them to finish. If necessary, ask short questions that require short answers, or a nod of the head.

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Never pretend to understand. If necessary, repeat what you have understood and allow the person to respond.

The majority of people with a hearing disability can make use of hearing aids, a cochlear implant and/or assistive listening devices. They communicate through spoken language. A person who is Deaf, often uses sign language.

Look directly at the person and speak clearly, in a normal voice. Shouting and exaggeration will only confuse the conversation. If possible, try to face the light source and keep hands, cigarettes and food away from your mouth when speaking. Keep a notepad and pen handy. It's a matter of common sense.

People with disabilities are acutely aware that they have some sort of limitation, but it is not necessary to change the normal lexicon or idioms of conversation. A person who uses a wheelchair... goes for walks, a person with a visual impairment... reads books or sees a friend, and a person who is deaf... hears jokes. The question once asked of a person with a visual impairment, "did you feel any good books lately?" is just too bizarre. Common sense?

## Québec... a “Distinct Experience



Disability rights in Québec evolved following the same pattern and raising the same issues as in the rest of Canada. Distinctions are reflected in the precedence of measures taken, the Québec legal system, and the social values of the citizens, starting with the “quiet revolution” in the fifties.

### **Warehouse, Green House, Open House!**

These are metaphors that illustrate the situation of persons with disabilities over the last sixty years. Remembering the forties and fifties, when persons with disabilities, physical, mental and developmental, were placed in institutions – *the Warehouse* - as a means to protect them (...or hide them away more than likely). Then from the sixties to the end of the seventies, with the availability of rehabilitation services, persons with disabilities were treated in a variety of settings – *the Green House* - to help them normalize and fit into society (cure or modify them to conform to a norm). Finally since the early eighties onward, persons with disabilities have been fighting and starting to

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gain acceptance as persons in their own right, not in need of fixing or changing into pale versions of “normal” people, but rather insisting on the need to modify society, such as the handicaps (barriers) in the services – transportation, education, employment, housing-, the built environment and people’s attitudes that excluded them from participating in the social and economical life of their communities - *the Open House* -. This last period is characterized by the Disability Rights Movement, persons with disabilities themselves advocating on their own behalf and a proliferation of Disability Rights organizations, under provincial, regional and municipal umbrellas.

## **Some “firsts” in Québec**

### **1975**

The adoption of the Québec Charter of Human Rights and Freedom, including the creation of the Commission des droits de la personne constituted under the Charter (regulatory body) followed by the adoption of the Canadian Charter of Rights and Freedom in 1982.

### **1976**

The adoption of la Loi 9 ensuring the rights and responsibilities of persons with disabilities,

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including the creation of l'Office des personnes handicapées du Québec (Office on Disability issues) This is a regulatory body.

## **1977**

The creation of la Société de l'Assurance automobile du Québec, and in 1986, the organization of Health and Social services under CLSCs (local community health and social services)

Automobile insurance, as in the case of Workmen's Compensation (CSST) ensured that victims have a right to compensation, rehabilitation, medical supplies, home modifications and care, and access to professional services to return to school and work. These insurance programs have created two classes of persons who become disabled - those who "Have"... and those who "Have not".

In this beginning of the 21st century, many important steps have enabled persons with disabilities and their organizations to be well informed and able to advocate for their rights. They are working now to ensure that all disabled persons are treated fairly and able to obtain quality services and adequate compensation, while on the other front, fighting to ensure that battles won stay won. As society



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has advanced and offered persons with disabilities equal rights, the latter are demanding that their needs be answered under these rights. Can the Justice system respond to the expectations for equality?

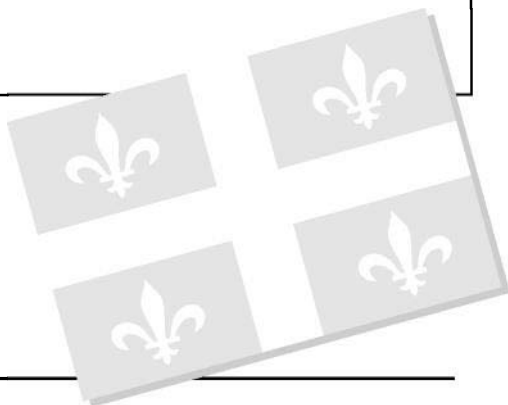
The law: The Québec Charter of Human Rights and Freedom

The Charter is said to be a fundamental law, because most of the rights it recognizes - the fundamental rights, the political rights, the judicial rights and the right to be treated equally - cannot be countermanded by any provision of any other law.

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In Québec, the rights of Persons with disabilities have been enshrined in the Charter of Human Rights and Freedom. The Commission des droits de la personne was constituted under the Charter in 1975. In 1995 the name was changed to Commission des droits de la personne et de la jeunesse, with the merging of the mandates.

Recourses to ensure respect for human rights: in the event of unlawful violation of a freedom or right recognized by the Charter, the victim is entitled to obtain cessation of the violation and compensation for any moral or material prejudice caused. La Commission makes non-adversary investigations, in accordance with the Charter of human rights and freedoms, into any situation, which appears to the Commission to be either a case of discrimination, harassment or a violation of the right of aged or handicapped persons against exploitation.





# The Record of Achievement

— A work in Progress...

**1948**

*United Nations Universal Declaration of  
Human Rights*

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood” (Article 1).

**1976**

In Québec, the adoption of la Loi 9 ensuring the rights and responsibilities of persons with disabilities, including the creation of l’Office des personnes handicapées du Québec (Office on Disability issues), as a regulatory body.

**1981**

*United Nations’ Year of Persons with  
Disabilities*

Canada’s *Obstacles Report* was written by a Special Committee of Parliament. It was

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based on widespread consultation across the country. Obstacles contained 130 recommendations, which involved every aspect of daily living. It is still a major reference document for anyone involved in disability.

## 1982

*The Canadian Charter of Rights and Freedoms (Section 15)* was introduced, specifically prohibiting discrimination on the basis of a disability. As a result, many pieces of legislation were amended including the Elections Act, the Human Rights Act, Employment Equity Act, and the National Transportation Act. In order to deal with disability issues, the Canadian Parliament passed an Omnibus bill in 1992 effectively amending several major existing laws and their regulations.

REACH Canada was started as part of the initiative to establish and maintain legal access for



**Reach  
Canada®**

EQUALITY AND JUSTICE  
FOR PEOPLE WITH DISABILITIES

ÉGALITÉ ET JUSTICE POUR  
LES PERSONNES AYANT UN HANDICAP

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people with disabilities.

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## 1983-92

- ***The Decade of Disabled Persons*** was declared by the United Nations. Canadian consumers played a lead role at the United Nations in New York, especially in the development of global “standard rules on disability”.
- *The Abella Commission’s report, “Equality in Employment”*. (1984) defines a strategy to “open equitably the competition for employment opportunities to those arbitrarily excluded”. This eventually gave rise to the Canada Employment Equity Act of 1986.
- *Rick Hansen’s “Man in Motion” World Tour* made the public much more aware of the capabilities of people with disabilities.
- The House of Commons established a very active *Standing Committee on Human Rights and the Status of Disabled Persons*.
- Premier’s Councils were established across Canada. Each province set up their own organisation for disability issues to advise their premier and legislative body on contemporary disability issues and strategies.

▫ *Canadian Human Rights Act (1985)*

“...all individuals should have an opportunity equal with other individuals without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability...”

The purpose of the Canadian Human Rights Act is to protect individuals from discrimination. It states that all Canadians have the right to equality, equal opportunity, fair treatment, and an environment free of discrimination. The Canadian Human Rights Tribunal (CHRT) applies these principles to cases that are referred to it by the Canadian Human Rights Commission (CHRC). The Tribunal is similar to a court of law, but is less formal and only hears cases relating to discrimination.

▫ *The Terry Fox Run For Cancer Research*

made the public much more aware that disabilities can be acquired. Since then, prevention and research into causes of disabilities have become more focused and better supported.





- *National Access Awareness Week* was implemented to give graphic examples to municipalities, policy makers and the general public about the barriers encountered by Canadians with disabilities. The Week first focused on the issue of physical access and ultimately expanded to address all sorts of disability issues in over 1,000 communities. National Access Awareness Week is no longer a government supported campaign, but it is still being held as a local event in many communities across Canada.
- *United Nations' Standard Rules on Equalization of Opportunities for Persons With Disabilities* were adopted so that any government, regardless of resources, could develop an action plan on disability, based on generally accepted principles of human rights.
- *Independence '92*, in which Canada played host to approximately 4000 people with disabilities from 140 countries, was held in one of the world's most accessible cities - Vancouver, BC. Many accessibility modifications were funded privately. Rick Hansen played a major role in this initiative.

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*United Nations' Special Rapporteur* was nominated by Canada. The Rapporteur assesses world progress on disability, region by region and country by country. This official is an advocate for the Standard Rules and helps to keep disability on the international agenda.

*UN declares December 3<sup>rd</sup> of each year International Day of Disabled Persons (1992).*

## **End of the UN Decade**

### **1992**

*Americans with Disabilities Act (1990)* takes affect, impacting every aspect of community life including housing, transportation, employment, recreation and service to the public. It is an act to establish a clear and comprehensive prohibition of discrimination on the basis of disability and illustrates a much broader federal and international maturation and understanding about the concept of inclusion.

### **1995**

The federal *Employment Equity Act* was passed to strengthen previous employment equity legislation. This legislation designates

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four particular groups who are considered at an employment disadvantage. It defines persons with disabilities as people who, because of any persistent physical, mental, psychiatric, sensory or learning impairment, believe that they are potentially disadvantaged in employment.

## **1996**

Hon. Andy Scott led a Parliamentary Task Force whose report (*Equal Citizenship for Canadians with Disabilities: The Will To Act*) examined the challenges of the 21st century.

## **1998**

*Franklin Delano Roosevelt Award on Disability* was won by Canada. The Award acknowledged Canada as a world leader in addressing disability issues and generated the expectation for continued leadership. The nomination of Canada was prepared and written by Reach.

## **1999**

The Supreme Court's Grismer & Meiorin decisions set higher standards for the duty of employers and others to accommodate a disability.

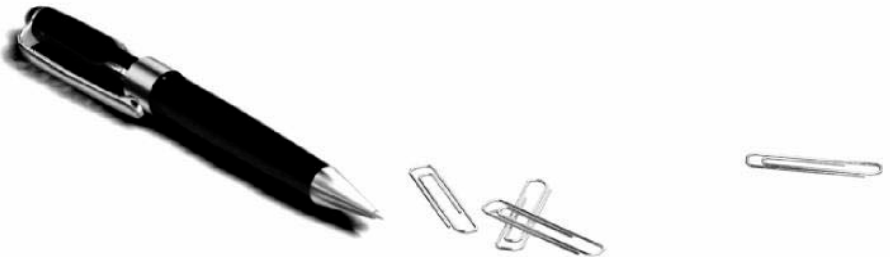
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## 2001

*Ontarians with Disabilities Act (O.D.A.)* was passed to improve opportunities for persons with disabilities and to provide for their involvement in the identification, removal and prevention of barriers to their full participation in the life of the province.

## 2005

*Accessibility for Ontarians with Disabilities Act (A.O.D.A.)* recognizes a history of discrimination against persons with disabilities. Among other things, the purpose of this act is to benefit all Ontarians by developing, implementing and enforcing accessibility standards in or to achieve accessibility for Ontarians with disabilities with respect to goods, services, facilities, accommodation, employment, buildings, structures and premises on or before January 1, 2025.





## A Case for "Case

### **The Right to Know and the Exercise of Rights**

Most law professionals have heard the expression that everyone is “presumed to know and understand the law”. However, many people with or without disabilities have difficulty understanding and using Canadian laws and legal institutions. As the Chief Justice of Canada explained to the Faculty of Law at the University of Manitoba: “we should do what we can to make the law clear and accessible to average Canadians. The law is perhaps, the most important example of how words affect people’s lives. There is truth in the proposition that if we cannot understand our rights, we have no rights. Beyond the content and impact of law, access to the law also requires that the public be informed about how the institutions of law are structured and how they operate in their interest. And it requires that the participants in the legal system be available to explain and respond to legitimate queries about that system and the principles that underline it.”<sup>1</sup>

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It becomes more important still, when one considers that over 40 % of Canadians have been found to be functionally illiterate,<sup>2</sup> and among these are many Canadians with disabilities. Whether that is because of learning disabilities, developmental disabilities or something else, a sizable number of citizens would benefit from a system that respects their right to understand the law and legal institutions, while offering reasonable accommodation.

Over the years there have been attempts by the courts and administrative tribunals to assure that our institutions are accessible. Despite developing case law and a variety of activities that are directed to this end, much more can be done. Little of the work to date makes adequate accommodations for Canadian with disabilities. In general the case law indicates that courts, tribunals, governments, and individuals have no responsibility to take positive steps to facilitate understanding or access, unless an individual through word or action indicates that he or she lacks relevant capacity. In very limited circumstances, the courts have suggested a positive duty by some to determine whether a person can understand and respond in certain situations. On occasion,

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the courts have suggested that professionals and public servants adapt their personal and professional behaviour to assist or, at least, not to hinder “access”.

Many persons with hidden disabilities and low literacy skills avoid disclosing any limitations. There still remains a perceived stigma and individuals may attempt to hide their limitations. Often in response to the question “Do you understand?”, they will respond, “Yes”, even when they don’t understand. Although the case law seems divided on the point, at least one court has referred to weak literacy skills as a disability.<sup>3</sup>

## **Criminal Law**

Some aspects of Criminal law indicate how the courts have responded to the right of an individual to understand the law as it affects him or her. One of the better-known aspects of rights is the requirement of the police to advise an accused upon arrest of his or her right to counsel. The Courts have held that the mere mechanical recitation of the right is not always sufficient. As McLachlin J., stated in 1991:

“A person who does not understand his or her right cannot be expected to assert it. The



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purpose of s. 10(b) is to require the police to communicate the right to counsel to the detainee. In most cases one can infer from the circumstances that the accused understands what he has been told. In such cases, the police are required to go no further...But where, as here, there is a positive indication that the accused does not understand his right to counsel, the police cannot rely on their mechanical recitation of the right to the accused; they must take steps to facilitate that understanding.” In this case the courts indicated that the accused did not have the conceptual ability to understand the caution. The police were aware of his disability and did not do enough to ensure his understanding.<sup>4</sup>

On a few occasions, unfortunately, courts have stated that a positive response to the question ‘Do you understand?’ will suffice to discharge this duty imposed on the police. As pointed out above, that is the exact question most likely to be answered “yes” by persons with invisible disabilities or weak literacy skills, even when they really don’t understand.<sup>5</sup>

The problem is exacerbated by the fact that those involved with the criminal justice system have greater frequency of learning disabilities

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and low literacy skills than the general population. The John Howard Society has found that indeed over 65% of inmates in the federal system and rising to over 80% in areas of higher aboriginal representation have weak literacy skills.<sup>6</sup>

This is one area of criminal law that would seem to cry out for a reverse onus. Should the onus be on police officers to show that they have attempted to discern the capacity of an individual to understand their right to counsel? The John Howard Society has developed a roadside literacy test that could be adapted for this purpose.<sup>7</sup> Perhaps, police training should include a professional and sensitive approach to establishing a person's capacity to

understand, and reasonable accommodation should be made for persons with disabilities?

## **Contract Law**

This area of the law has long appreciated that certain persons with disabilities should be protected from the unscrupulous acts of persons attempting to exploit them. As far back as the fourteenth century the courts had already developed a defence known as "Non es factum"<sup>8</sup>. As Byles J. put it in *Foster v. Mackinnon*<sup>9</sup>, "It seems plain, on principle and

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on authority, that, if a blind man, or a man who cannot read, or who for some reason (not implying negligence) forbears to read, has a written contract falsely read over to him, the reader misreading to such a degree that the written contract is of a nature altogether different from the contract pretended to be read from the paper which the blind or illiterate man afterwards signs; then, at least if there be no negligence, the signature so obtained is of no force". (at p. 711). In short, in situations where a person with limited capacity has acted reasonably to try to determine what is in a contract and what is expected of him or her, he or she may have the contract cancelled.

The Canadian courts have adopted this approach to contract law, but have added an additional caveat. In addition to acting reasonably, the courts have suggested that a person has a positive duty to inform another party if they do not understand what they are signing.<sup>10</sup>

The difficulty with this approach is that it fails to acknowledge the reality, noted above, that many people with hidden disabilities are unlikely to admit a lack of understanding when signing a document.

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Perhaps, plain language would help and contracts not sufficiently clear, in certain situations, could be set aside?

## **Informed Consent to Medical Treatment**

Interestingly enough, the Canadian Courts have put an exceedingly high onus on medical doctors and dentists when they attempt to obtain a legal consent to treatment. In *Reibl v. Hughes*<sup>11</sup>, Laskin C.J., as he then was, indicated that it was the duty of doctors to explain treatment in a manner understood by the patient. The extent to which this positive duty exists, was explored in the case of *Lue v. St. Michael's Hospital*<sup>12</sup>. The court suggested eight different considerations that would indicate whether the approach taken by the doctor would actually lead to a legal consent. Central to these criteria is an approach where the doctor must show that he or she had attempted to accommodate the needs of the patient. A true consent might involve several considerations.

1. Whether the patient asked any questions. A failure to ask appropriate questions may indicate the patient is overwhelmed and uncomprehending. As a corollary, the

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- comments or questions that the patient does raise may also reveal comprehension of the material risks.
2. Whether diagrams or other visual aids are relevant. Depending on the intellectual abilities of the patient, pictorial descriptions sufficient to communicate seriousness may be part of the process.
  3. Whether the patient can restate what the physician has communicated. At some point after the disclosure, can the patient describe, in his or her own terms, the procedure and risks that are about to unfold?
  4. Whether the patient has asked for a second opinion. Patients are understandably reluctant to be perceived as doubting the advice of the doctor by suggesting a second opinion. But when an "...organ of our humanity..." is involved, the doctor should consider raising it as a possibility and explain to the patient how that course of action could be implemented.
  5. Whether any information is put in writing. For example, does the patient have access to brochures that describe the generic condition with usual questions and answers? Did the physician write a note or letter to the patient, or

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a letter to the general physician with the stated expectation that the latter would review it with the patient? Did the doctor make a note in the patient's chart. Is there a protocol in writing for the physician to follow and was it followed?

6. Whether the time spent with the patient is realistic in terms of enabling the patient to hear, understand, and evaluate. Whether the information is communicated in the language most likely to be understood and on more than one occasion to reinforce the seriousness and afford an opportunity to ask questions which may not have occurred to the patient in the anxiety of the original disclosure.
7. Whether the patient is dependent on family members for assistance in decision-making. Whether the treatment (or lack thereof) could result in impaired cognitive abilities. In either case, involvement of the family is not a courtesy; it is a necessity. If others are involved, whether their recollection of events coincides with the doctor's. The more obviously the patient is dependent on such people, the more importance should be attached to 1-6 above.
8. Whether the patient or family express spontaneous surprise, when the event,

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allegedly described in advance as a material risk, unfolds.

These same considerations have been extended to dentists.<sup>13</sup>

This is probably the one area with respect to the right to know and exercise of rights that provides adequate protection to Canadians with disabilities.

Perhaps, the approaches suggested by the Court, in this case, should be adapted to other situations? Is it possible to establish tests for police officers, public servants and even judges and tribunal members, in working with people with disabilities?

## **Administrative Law**

In administrative law, like contract law, there seems to be the same view that individuals assume responsibility to understand the nature and the effect of their behaviours. However, there is some indication that reduced capacity and even reliance on the acts of officials may well lead to an expanded duty for public servants to respond in a professional and effective manner.

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In the Immigration process, the ability of a person to understand and act appropriately can have grave consequences for the applicant and any family member. Many decisions emphasize individual responsibility. Each individual is expected to understand the law and associated documents.

Reasonable accommodation, such as the provision of an interpreter to facilitate understanding of a person in immigration matters, is now required by courts and tribunals. This parallels the types of accommodations required for persons with disabilities in other areas of the law. Materials are expected to be in appropriate format and interpreters are expected to be competent. In one case an illiterate 53-year-old woman was interviewed and provided written information or interpreters in three languages. However, she did not read, write, speak or understand any of the languages. The action against the woman was dismissed .<sup>14</sup>

Other interesting cases, dealing with issues related to social services, come from Québec. After an extensive review of these cases, one author concludes that generally speaking, although ignorance of the law is not an excuse,



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the Québec courts agree that a claimant, who has by reason of inability to communicate, a low level of education, or an absence of language skill, must have reasonable accommodations made, to provide access to justice.<sup>15</sup> Understandably, social services is an area of particular importance in the day to day lives of many Canadians with disabilities. Tribunals should provide documents in an understandable format and within reasonable time periods. Plaintiffs are expected to act reasonably and without negligence. However, when vulnerable plaintiffs require such things as the translation of documents or procedural information from officials, and they are not provided, the courts favour the plaintiff's case. In one case, a person relied on a public servant who advised him to sign a letter reimbursing the government in the amount of \$56 a month. He applied for review outside the appeal period. The tribunals found that the applicant "had physical and psychological difficulties and ... could be influence by the agent in charge". He was allowed to apply for review.<sup>16</sup>

While there has been some recognition of the duty of public servants and tribunal members to determine the capacity and ability of a person to understand, much remains to be done. There

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seems to be an increasing onus to provide assistance and provide reasonable accommodation to persons with disabilities but, consistency is still problematic.

## **Court Ordered Counsel**

An important aspect of exercising rights as a person with a disability is the ability to access counsel in complex cases. With government cutbacks to all programs, the ability of all Canadians to access legal aid has been reduced. The courts have responded in exceptional criminal cases by ordering government to provide counsel. The lead case, *R v Rowbotham*,<sup>17</sup> established three criteria for an exceptional order. A person must lack the funds necessary to have a lawyer and he or she must have been denied legal aid. Finally and most importantly, his or her case must be sufficiently complex to warrant the appointment of counsel, taking into consideration the capacity of the accused to comprehend the issues before the court. This last criteria is of particular interest to persons with disabilities.

The Supreme Court of Canada extended this protection to situations where the state makes application to take custody away from parents. Whether counsel will be provided, depends

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upon the seriousness of the interests at stake, the complexity of the proceedings and the capacities of the parent. If counsel is not provided by legal aid, then a trial judge has the power to order the government to provide state funded counsel under s. 24(1) of the Charter. Lamer, Chief Justice, as he then was, stated with respect to capacity “It is unfortunately the case that this is true of a disproportionate number of parents involved in child custody proceedings, who often are members of the least advantaged groups in society. The more serious and complex the proceedings, the more likely it will be that the parent will need to possess exceptional capacities for there to be a fair hearing if the parent is unrepresented”.<sup>18</sup>

The necessity to get courts to order governments to provide legal assistance in exceptional cases is awkward and expensive. A person just doesn't know when or if support is possible. There are specialized legal aid clinics such ARCH<sup>19</sup> or voluntary associations such as Reach<sup>20</sup> that can provide limited assistance to Canadian with disabilities but much more is required.

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Perhaps, a review of how legal services are provided to Canadian with disabilities should be undertaken in order to identify better practices as a basis for county-wide models?

## **Self-representation before Courts and Tribunals**

Given the budgetary restriction on legal aid, more and more Canadians with disabilities will be required to represent themselves before courts and tribunals to exercise their right to know and receive the benefit of the law. As the Chief Justice points out:

“Unrepresented litigants encounter their first difficulties at the Courthouse door. Court staff already overburdened – especially in large urban jurisdictions – face increasing numbers of self-represented litigants who ask for explanations of the legal process as it pertains to their cases. While court clerks have traditionally assisted lawyers and their staff by providing instructions as to the appropriate rule to follow or form to file, they are rightly hesitant to offer legal advice. That means not only devoting sufficient resources, but also using the most creative mechanisms possible to ensure full and meaningful access to, and participation in, the legal process...”<sup>21</sup>

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The difficulty arises when a judge or tribunal member intervenes to aid one party or another in a proceeding. How can the judge or tribunal member maintain their neutral role? As Madame Justice Anne L. Mactavish, Federal Court of Canada, points out, this is a difficult and thorny issue. As she put it “Further complicating, is the fact that some litigants appearing before your tribunals may suffer from either physical or mental disabilities or other types of limitations —such as literacy problems—that may affect their ability to communicate ... or present their case.”<sup>22</sup> The courts have looked at the role of judges and tribunal member to indicate what they can and cannot do when an unrepresented litigant appears.

In *Wagg v. Canada*<sup>23</sup>, the Federal Court of Appeal suggests that a judge has a duty to direct an unrepresented litigant to salient points of law and procedure. An arbiter should attempt to focus their attention to issues of interest. In *Borden and Elliot v. Deer Home Investments*,<sup>24</sup> the court suggests more patience and courtesy, repeated explanations of rules and procedure, and possibly a longer and more protracted hearing, not only to provide a fair hearing but also the perception of a fair hearing. An interesting aspect of this case is the insistence

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on the role of opposing counsel to assist in the proceedings as an officer of the court. The Honourable Anne L. Mactavish, in her speech referred to above, goes on to suggest how best tribunals and courts can respond. Her final suggestion is that “it is very important that you be sensitive to the fact that some of the people appearing before you –whether as litigants or even as witnesses may have hidden disabilities”.<sup>25</sup> Unfortunately she does not expand on this idea to provide more guidance.

There is natural reluctance of impartial arbiters to enter the process. Persons with disabilities require special responses but little has been suggested, on the record, to recommend how judges, tribunal member or other officers of the court should intervene.

Perhaps the Justice system, in general, requires a review to determine possible alternatives?

## **The Administration of Courts and Tribunals — on the right track!**

At both local and national levels, there has been a recognition by courts and administrative bodies that things have to change to be more

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responsive to the needs of persons to know and exercise their rights. Some have responded directly to the needs of Canadians with disabilities. The Canadian Judicial Council has produced plain-language instruction for juries. The Chief Justice stated that these “instructions will help judges explain legal technicalities in plain language that ordinary people can understand and apply. The goal is to minimize the risk of misdirecting juries.... They will benefit judges, lawyers and jurors, and strengthen the administration of justice in this country”<sup>26</sup>

The National Judicial Institute has also taken a lead role in the education of judges. They have, from 1996, taken a leadership role in the social context approach to judicial education.<sup>27</sup> This allows for the integration of issues such as the needs of persons with disabilities to be integrated into all aspect of judicial education. In spite of this, they have continued to develop individual courses to highlight specific needs. One example is Disability Issues in the Judicial Context, This program “assists judges to more clearly understand the experiences and characteristics of persons with mental and physical disabilities and their interactions with the court processes.”<sup>28</sup> They have also dealt

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with the issue of literacy and these materials are available on the Internet.<sup>29</sup>

The Canadian Association of Provincial Court Judges has been a member on the Social Context Committee of the National Judicial Institute for some time. In 1998, after input from the “Association”, the principle of equality was added to the statement of ethical principle for judges. “Judges should conduct themselves, and proceedings before them, so as to assure equality according to the law... Judges should strive to be aware of and understand

differences arising from, for example, gender, race, religious conviction, culture, ethnic background, sexual orientation or disability.”<sup>30</sup>

The Association’s annual meeting in September 2005 had as its theme, Challenges for the 21st Century: Access to Justice. Presentations were made on disability, literacy, and multiculturalism with suggestions on how judges should deal creatively with the issue of diversity.<sup>31</sup>

Administrative Tribunals have in their own way attempted to respond to the issue of access. The Office of the Commissioner of Pension Tribunals has developed a 30 minute video with professional actors to help people with appeals.<sup>32</sup> The British Columbia Securities has



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adopted an institution wide plain language approach to their work.<sup>33</sup> The Canadian Human Rights Tribunal has developed a plain written guide to its process that is available in alternate formats.<sup>34</sup> The Council of Canadian Administrative Tribunals has begun to look at these issues and is developing a generic program on accessibility. – While there is much work under way, there does not seem to be an easy point of reference or an effective centre for coordination. A clearinghouse that capitalizes on accessible technology might be a useful way to promote a pan-Canadian effort to ensure that persons with disabilities access their right to know and exercise their rights accordingly? .

Discrimination through failure to accommodate a disability regarding work, education or services is common. In 1999 the Grismer Supreme Court decision strengthened the (evolving) legal duty to accommodate throughout Canada.



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## End Notes for Case Law

1. Right Honourable Beverley McLachlin, P.C. Distinguished Visitor's Lecture, Preserving Public Confidence in the Courts and the Legal Profession. Remarks at the University of Manitoba, Faculty of Law, Winnipeg Manitoba, February 2, 2002.
2. Statistics Canada, The Survey of Literacy Skills Used in Daily Activities. Ottawa, 1990.
3. In the case of Hassan v. Canada (Minister of Citizenship and Immigration), [2002] F.C.J. No. 1049 (Fed. Ct. T.D.) the court stated that low literacy is a disability. However compare that to the result in Mohammed v. Canada (Minister of Citizenship and Immigration), [1997] F.C.J. No. 605 (Fed. Ct. T.D.).
4. R. v. Evans, [1991] 1 S.C.R. 869 at paras. 44 and 46.
5. R. v. Roberts (1991), 95 Nfld. & P.E.I.R. 49 (Nfld. Prov. Ct.); R. v. Dubois (1990), 54 C.C.C. (3d) 166 (Que. C.A.) at pp. 195-97).
6. John Howard Society as quoted in Journal of the Canadian Association of Provincial Court Judges, winter 2005 at p. 20.

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7. For more information on this project contact the John Howard Society of Saskatchewan at <http://www.johnhoward.ca/directory/sask/Jhssask.htm>.
  8. Thoroughgood's Case (1582) 76 E.R. 408.
  9. Foster v. Mackinnon (1869), L.R. 4 C.P. 704 at p. 711.
  10. Alta Vista Towers v. Nalaya, [2000] O.R.H.T.D. No. 45.
  11. Reibl v. Hughes (1980), 114 D.L.R. (3d) 1 (S.C.C.).
  12. Lue v. St. Michael's Hospital, [1997] O.J. No. 255 (Gen. Div.)111.
  13. Finch v. Carpenter, [1993] B.C.J. No. 1918 (B.C.S.C.).
  14. Ibrahim v. Canada (Minister of Citizenship and Immigration), [1996] I.A.D.D. No. 916.
  15. Canadian Council of Administrative Tribunals, Literacy and Access to Administrative Justice in Canada: A Guide for the Promotion of Plain Language , Ottawa, 2005 pp 68-78.

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16. Social Affairs – 175, [1998] T.A.Q. File no. SR-63565, (21 december 1998).
  17. R. v. Rowbotham (1988), 41 C.C.C. (3d) 1 (Ont. C.A.).
  18. New Brunswick (Minister of Health and Community Services) v. G. (J)., [1999] 3 S.C.R. 46. Par 86.
  19. ARCH: A Legal Resource Centre for Persons with Disabilities 110-425 Bloor St. W., Toronto, Ontario, M4W 3R5 Phone: 416-482-8255 , [www.archdisabilitylaw.ca](http://www.archdisabilitylaw.ca) .
  20. For more information contact Reach Canada 400, rue Coventry Road, Ottawa, Ontario K1K 2C7 [www.reach.ca](http://www.reach.ca) .
  21. Right Honourable Beverley McLachlin, P.C. Distinguished Visitor's Lecture, Preserving Public Confidence in the Courts and the Legal Profession. Remarks at the University of Manitoba, Faculty of Law, Winnipeg Manitoba, February 2, 2002.
  22. Madame Justice Ann Mactavish, "The Self-represented Litigant", speech delivered at the Annual Conference of Canadian Council of Administrative Tribunals, June 21. 2005 p.2..

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23. Wagg v Canada [2004] 1 FCR 206.
  24. Borden and Elliot v. Deer Home Investments (1992), 14 CPC (3rd) 269.
  25. Madame Justice Ann Mactavish, ibid, p 21
  26. Canadian Judicial Council, Press Release, Model Jury Instructions, March 26, 2004.
  27. National Judicial Institute, Annual Report 2002 -03. p.8
  28. ibid, p. 10
  29. Please refer to this links <http://www.nji.ca/Public/documents/LiteracyGuideEv3.pdf> and <http://www.nji.ca/Public/documents/LiteracyandAccesstotheCanadianJusticeSystem.pdf>
  30. Journal of the Canadian Association of Provincial Court Judges, Summer 2003 at p.49.
  31. ibid, winter 2005 see generally.
  32. Your Best Shot, a video available from the Office of the Commissioner of Review Tribunals, Ottawa. Ontario.
  33. British Columbia Securities Commission. BCSC Plain Language Guide. And

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newsletter Breathing New Life Into Plain

[Language. www.bcsc.bc.ca/about/  
plainlanguage/asp](http://www.bcsc.bc.ca/about/plainlanguage/asp) .

34. What Happens Next available from the  
Canadian Human Rights Tribunal , Ottawa  
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## **Relevant Resources & Web Sites**

Canadian Council of Administrative Tribunals, Literacy and Access to Administrative Justice in Canada: A Guide for the Promotion of Plain Language , Ottawa, 2005

Canadian Human Rights Tribunal, What Happens Next , Ottawa Ontario

Canadian Judicial Council, Press Release, Model Jury Instructions, March 26, 2004.

McLachlin, the Right Honourable Beverley, P.C. , Distinguished Visitor's Lecture, Preserving Public Confidence in the Courts and the Legal Profession. Remarks at the University of Manitoba, Faculty of Law, Winnipeg Manitoba, February 2, 2002.

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Reach Canada ,400 rue Coventry Road,  
Ottawa, Ontario, K1K 2C7  
[www.reach.ca](http://www.reach.ca)



## Some Myths



### Myth

People with disabilities are fragile and unhealthy.

### Fact



They must maintain a high level of health like everyone else. Their real concern relates to citizenship responsibility and the dignity that comes from exercising their rights.

### Myth

People with disabilities live very different lives than non-disabled people.

### Fact



Overall, people with disabilities live pretty much the same lives as everyone else and face similar concerns about things such as taxation, education, access to service, health care, the price of gas and good child care. Sometimes they may do certain activities a

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little differently, depending on the type and severity of their disability. Someone with paraplegia or quadriplegia, for example, may still drive their vehicle using hand controls or other modifications! Persons with disabilities are busy, like everyone else, making adjustments to cope with the concerns of everyday life.

## Myth

Persons with disabilities are exemplary human beings, showing marvellous strength of character. Often they are heroic and paragons of virtue.

## Fact



Maybe so, but generalisations are dangerous. There is only one Rick Hansen or Stephen Hawking. There is no monolithic identity related to disability. The diversity found in the community, is just as real and prevalent within the disability population across Canada.

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## Myth

Violence is often demonstrated by people with mental illness.

## Fact



People with mental illness are more often likely to be VICTIMS of violence rather than the perpetrators. Unfortunately, public fear and media attention attributed to a violent person with mental illness only exaggerates the impression of danger and frequency.

## **Myth**

People with disabilities are all well educated.

## **Fact**



People with disabilities experience a shortfall in education. In fact, literacy is still a critical issue to employability.

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## Myth

Persons with disabilities are taken care of quite comfortably by government social services.

### Fact



The majority of people with disabilities live on fixed incomes that are well below poverty lines. Their lifestyles are minimalist, defined by a constant struggle to just make ends meet. The idea of being cared for adds insult to injury.

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## Myth

Employees with disabilities have a higher absentee rate than employees without disabilities.

### Fact



Studies consistently show that employees with disabilities are not absent any more than other employees. In fact, American studies show that, on average, employees with disabilities have better attendance rates, and are more reliable and loyal, than their non-disabled counterparts.



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## Myth

People with disabilities have achieved the same access to the job market as every one else.

## Fact



Employment equity programs have been successful for only a fraction of people with disabilities. The majority is still unemployed or under-employed and almost invariably under paid.

## Myth

People with disabilities are more likely to have accidents than other employees.

## Fact



Two leading American studies found that workers with disabilities performed significantly higher than their non-disabled counterparts in the area of safety. The studies included people in professional, technical, managerial, operational, labour, clerical and service areas. Conclusion: workers with disabilities are often MORE aware, not less, of safety issues in the workplace!

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## Myth

Accommodating workers with disabilities in the workplace almost always involves modifying the job or the environment at considerable expense.

## Fact



Most workers with disabilities require no special accommodations and the cost for those who do is minimal or much lower than many employers believe. Studies (USA) by the President's Committee on Job Accommodation revealed the following:

- 15% of accommodations cost nothing
- 51% of accommodations cost between \$1 and \$500
- 12% of accommodations cost between \$501 and \$1,000,
- 22% of accommodations cost over \$1,000!

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## Myth

People who are hard of hearing use sign language or “lipreading” to communicate.

## Fact



Over 3 million Canadians have a hearing disability and, of those, only 300,000 are Deaf and use sign language. The correct term is "speech reading" (not lipreading), but there are still many misconceptions and myths about it.

## Myth

A lot of people with disabilities today are asking for special rights.

## Fact



People with disabilities are citizens and taxpayers. They ask for, and expect equal access to, among other things, education, housing, justice, employment, social programs, recreation and transportation.

**As citizens they expect parity, not charity!**

## Persistent and Emerging



Canada is acclaimed internationally for the database that has been developed on disability and citizens with disabilities. In 1991, The Health and Activity Limitations Survey (HALS) Reported that approximately 16% or 4.2 million Canadians of all ages have a disability. In some isolated areas and Aboriginal communities the rate of disability is as high as 30%. These trends continue today.

In Canada, 65% of adults with disabilities earn less than \$10,000.00 per year, while only 5% earn \$30,000.00 or more. Some people with a disability have never held any job, and many, if not most, work in temporary and low paying jobs.

Much of the reason for this high rate of under-employment and unemployment among people with disabilities can be found in a physically inaccessible work place, reluctant and ill informed co-workers who create an uninviting work environment, rigid recruitment and interviewing policies, and a highly competitive work force.

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## Employment

Canadians place a great value on being employed and the status it brings to the individual. Employment is a mark of full citizenship. Employed people pay taxes to support the infrastructure of their country, province and community. They contribute to the growth and betterment of themselves and their future. However, some people with disabilities can never find full employment.

Even the majority of people with only mild disabilities are less likely than other citizens to be fully employed. Moreover, the work force participation rate for women with disabilities is significantly lower than for men and consequently, so is their income.

There are times when a physical, mental or emotional condition excludes someone from employment and the dignity and self-esteem that comes from “earning your way through life.” There are other times, when attitudes interfere and people see those with disabilities as having no value to society at all. This battle for understanding has yet to be fought with rigor and leadership.

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## **Income Sources**

Most disability income that is not generated through employment is provided by various governmental programs, each with a different structure and requirement.

Eligibility is not necessarily based on need, but often based on how the disability is acquired, be it work related or non-work related.

Workers Compensation and Canada and Québec pension plans are available to people who have been employed and who have contributed to these plans. But 65% of people with disabilities who are employed earn less than \$10,000 per year and their ability to claim back for subsequent injury is minimal. Since many people with disabilities have never worked, they have never contributed, and they are usually ineligible for training or retraining from these programs.

Other sources of income include welfare, social assistance, family allowance, and child tax credits. Seldom is this enough to live on. The current workfare debate just complicates the issue when payments are intentionally kept low in order to encourage recipients to “make something of themselves”. For people with

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disabilities this situation is a lose-lose proposition.

In many regions of Canada, assistance to people with disabilities is based on a concept of “unemployability”. Ultimately, this destroys self-esteem and also leaves the individual ineligible for employment training, rehabilitation or job retraining.

In the final analysis, poverty itself, is a hazard for people who already have to deal with health issues associated with a disability. In one sense, this is a kind of institutional neglect and some might suggest that it borders on state sponsored eugenics.

## **Accessibility**

The concept of accessibility is often focussed on the idea of wheelchair access. The installation of ramps, automatic door openers and modified washrooms are all very important for access and egress. These modifications are of great benefit to any number of people, not just to wheelchair users. Pregnant women, people with baby carriages, people with walkers and canes, and people with visual impairments, all find these modifications useful.

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Retrofitting buildings to accommodate the needs of people with disabilities can be very expensive, but modifications in building standards can reduce the cost substantially. If city by-laws require accessibility to be a 'built in' feature of construction, the initial expense is virtually non-existent. Some modifications are astonishingly simple. For instance, a new building designed with street level access, wider doorways (or open concept), non-slip flooring, levered door handles, and Braille signage at an accessible level may increase the cost of construction by a fraction of what it would cost to retrofit these buildings.

## **Literacy**

Considerable sensitivity is required when discussing the link between disability and literacy. This is a difficult subject to broach for numerous reasons, not the least of which is the need to ensure respect for the individuals who may be dealing with the issues involved. A person with a disability is not necessarily illiterate and a person with low literacy skills is not necessarily disabled. However, a person who has a disability and has low literacy skill is doubly disadvantaged. One possible cause of low literacy skills among persons with



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disabilities may be found in society's attitude that people with disabilities are not equal partners in society. Whatever the cause, the outcome is very expensive for all Canadians.

According to a leading Canadian consumer group on disability, the Canadian Association for Community Living:

"Literacy is no longer simply about committing to helping people to read and write; it is about recognizing communication as a right. Literacy no longer means focusing on individual skills in reading and writing; it is about focusing on the ability of communities and institutions to make inclusive communication possible. Literacy no longer questions and assesses the skills of individuals with disabilities; rather, it puts the onus on community members to develop the skills to communicate with people with disabilities. Literacy is about communication - any type of communication - because those of us who do not read or write still find many ways by which we make ourselves understood. This too is literacy."

Another aspect of this complex situation involves the right to an equal and equitable education. We need to understand how these

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rights of persons with a disability to education are affected because of the disability.

In this light, the issue of literacy is not restricted to the teaching of reading, writing and numeracy. It is also about effective communications and responses by Canada's institutions.

According to one leading advocate for equality: "Attention to equality is neither an act of grace nor self-serving charity. It comes down to one compelling and irrefutable fact. Equality is a matter of justice. Is it any different for a person with a disability?"

**But, physical accessibility is only part of the issue.**

Accessibility to information and communication is equally important. Braille signs and publications, large print documents properly bound, telephone listening devices, translators, and auditory walk signals at street corners all contribute to the independence, confidence and security of people with disabilities. These modifications are not an inconvenience to non-disabled people and can, more often than not, prove to increase everyone's comfort level. Participation in routine daily activities is an increasing reality for more and more people

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with disabilities. As Canadians become accustomed to technologies and practices that break down artificial barriers, everyone benefits from a world that is accessible.

The computer age is extremely beneficial to an increasing number of people with disabilities. The potential improvement for employment and social interaction has never been better. The technology exists now to allow people with disabilities to live independently as never before. Computer programs allow people with a variety of disabilities to interact with the rest of the world. Voice recognition programs can be used both on the job, and at home. Scanners give access to standard print material that can be translated into auditory presentation. The Internet has allowed an increase in communication around the globe and increased integration of people with disabilities in venues that were closed in decades past. However, these devices cost money, and given the financial realities faced by people with disabilities, they are not as available as one would wish.

#### Access

to assistive devices is still one of many areas that must be improved.



## Contact



There are over 5,000 consumer groups in Canada working in the disability field. All are willing and anxious to assist in understanding disability issues and problems with the justice system.

“**Enablelink**”, developed by The Canadian Abilities Foundation, is one of many Internet Web sites that offers a wealth of information and contacts on disability. It includes a directory of disability organizations, a product catalogue and advocacy and support groups. Access the resources nearest you at: (<http://www.enablelink.org>)

### **Major national disability organizations describe themselves as follows:**

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***Council of Canadians with Disabilities (CCD)*** improves the status of persons with disabilities through monitoring Federal legislation as it impacts on people with disabilities.

926, 294 Portage Ave.  
Winnipeg, MB R3C 0B9  
Phone: (204) 947-0303  
Website: [www.pcs.mb.ca/~ccd/](http://www.pcs.mb.ca/~ccd/)

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**Canadian Association of Independent Living Centres** (CAILC) promotes and encourages citizens with disabilities to take responsibility for their personal lives and to participate fully in the affairs of their communities.

1004, 350 Sparks St.  
Ottawa, ON K1R 7S8  
Phone: (613) 235-2581  
Website: [www.cailc.ca](http://www.cailc.ca)

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**Canadian Paraplegic Association** promotes the independence, self-reliance and full participation of Canadians with spinal cord injury and other significant mobility disabilities through counselling, information and advocacy.

230 - 1101 Prince of Wales Dr.  
Ottawa, ON K2C 3W7  
Phone: (613) 723-1033  
Fax: (613) 723-1060  
Website: [www.canparaplegic.org](http://www.canparaplegic.org)

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***DisAbled Women's Network*** (DAWN) is a national, cross disability organisation of women with disabilities in Canada whose focus is in the area of research, defining the needs and concerns of women with disabilities and designing programs to address those needs and concerns.

408 3637 Cambie St.  
Vancouver, BC V5Z 2X3  
Phone: (604) 873-1564  
Website: [www.dawncanada.net](http://www.dawncanada.net)

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***Canadian Council of the Blind*** (CCB) is a national self-help consumer organization "of" persons blind, deaf-blind and visually impaired.

National Office  
401 - 396 Cooper St.  
Ottawa, ON  
K2P 2H7 Canada  
Telephone: 613.567.0311  
Toll-free: 877-304-0968  
Fax: 613.567.2728  
Email: CCB National Office  
Website: [www.ccbnational.net](http://www.ccbnational.net)

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***The Canadian National Institute for the Blind***

(CNIB) is a service organization that helps blind, visually impaired, and deaf-blind Canadians live in a sighted world.

National Office

1929 Bayview Avenue

Toronto, ON M4G 3E8

Phone: (416) 486-2500

Fax (416) 480-7677

Website: [www.cnib.ca](http://www.cnib.ca)

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***Canadian Association of the Deaf*** promotes and protects the rights, needs and concerns of Canadians who are deaf.

205 - 2435 Holly Lane

Ottawa, ON K1V 7P2

Phone: (613) 526-4785

TTY: (613) 526-4785

Website: [www.cad.ca](http://www.cad.ca)

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**NEADS** - National Educational Association of Disabled Students promotes the self-empowerment of post-secondary students with disabilities.

Rm. 426, 4th Level  
Unicentre, Carleton University  
Ottawa, ON K1S 5B6  
Phone: (613) 526-8008  
TTY: (613) 526-8008  
Fax: (613) 520-3704  
Website: [www.neads.ca](http://www.neads.ca)

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**Canadian Association for Community Living** (CACL) is Canada's national association dedicated to promoting the participation of people with intellectual disabilities in all aspects of community life.

Kinsmen Bldg.  
4700 Keele  
North York, ON M3J 1P3  
Phone: (416) 661-9611  
TTY: (416) 661-2023 Fax:  
(416) 661-5701  
Website: [www.cacl.ca](http://www.cacl.ca)

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***National Institute of Disability Management and Research*** is committed to reducing the

human, social and economic cost of disability to workers, employers and society through education, training and research.

3699 Roger St.  
Port Alberni, BC V9Y 8E3  
Phone: (250) 724-4344  
Website: [www.nidmar.ca](http://www.nidmar.ca)

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**Canadian Hard of Hearing Association** is a bilingual organization that works to eliminate the isolation, indignation, and frustration of hard of hearing and deafened persons by assisting in increasing personal self esteem and confidence which will lead to total integration in society.

Canadian Hard of Hearing Association  
2435 Holly Lane, Suite 205  
Ottawa, Ontario, K1V 7P2

Voice: 613-526-1584  
TTY: 613-526-2692  
Fax: 613-526-4718  
Toll-Free: 1-800-263-8068 (Canada Only)  
Website: [www.chha.ca](http://www.chha.ca)

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***The Neil Squire Foundation*** is the only not-for-profit organization in Canada to use “technology, knowledge and passion” to empower Canadians with physical disabilities. Their work helps clients remove obstacles and barriers so that they can live independent lives and become active members of society.

Head Office

Suite 220 - 2250 Boundary Road

Burnaby, BC V5M 4G5

Phone: (604) 473-9363

Fax: (604) 473-9364

Website: [www.neilsquire.ca](http://www.neilsquire.ca)

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***Canadian Council on Rehabilitation and Work*** (CCRW) is a network of organizations and individuals that provides leadership in programs and services for job seekers with disabilities and businesses committed to equity and inclusion.

Head Office

11 Richmond Street West,

Toronto, ON

M5H 2G4

Phone: 416-260-3060

Website: [www.ccrw.org](http://www.ccrw.org)



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Ottawa, Ontario , K1K 2C7

Phone: (613) 236-6636

TTY/ATS: (613) 236-9478

Fax: (613) 236-6605

Toll Free: 1 800 465-8898

email: [reach@reach.ca](mailto:reach@reach.ca)

website: [www.reach.ca](http://www.reach.ca)

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